

House Bill 1413

By: Representatives Stephens of the 164th, Maxwell of the 17th, Parrish of the 156th, Parham of the 141st, Carter of the 159th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, so as to provide for insurance coverage of therapeutically equivalent drugs under certain circumstances; to provide for definitions; to provide for construction; to provide for enforcement by the Commissioner of Insurance; to amend Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, so as to eliminate redundant language relating to the practice of medicine; to provide for the dispensing of therapeutically equivalent drugs by a pharmacist to a patient for purposes of formulary compliance if approved by the ordering practitioner; to provide for notice to the ordering practitioner of the substitution; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, is amended by adding at the end thereof a new Code Section 33-24-59.13 to read as follows:

"33-24-59.13.

(a) As used in this Code section, the term:

(1) 'Health benefit policy' means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, or renewed in this state, including, but not limited to, those policies, plans, or contracts executed by the State of Georgia on behalf of state employees under Article 1 of Chapter 18 of Title 45, by an insurance provider.

(2) 'Insurance provider' means an insurance company, carrier, or similar third-party payor plan.

(b) Every health benefit policy that is delivered, issued, executed, or renewed in this state or approved for issuance or renewal in this state by the Commissioner on or after July 1, 2006, which provides coverage for prescription drugs shall ensure that if a therapeutically equivalent drug is substituted for the specifically prescribed drug for purposes of formulary compliance with the patient's health benefit policy by a pharmacist in accordance with Code Section 26-4-81.1, the insurance provider will cover such drug dispensed.

(c) Nothing in this Code section shall be construed to require any health benefit policy to include coverage for prescription drugs.

(d) The Commissioner is authorized to enforce this Code section and, in doing so, to exercise the powers granted to the Commissioner by Code Section 33-2-24 and any other provisions of this title."

SECTION 2.

Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, is amended by striking Code Section 26-4-81, relating to substitution of generic drugs for brand name drugs, and inserting in its place the following:

"26-4-81.

(a) In accordance with this Code section, a pharmacist may substitute a drug with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed brand name drug product which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(b) If a practitioner of the healing arts prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(c) Substitutions as provided for in subsections (a) and (b) of this Code section are authorized for the express purpose of making available to the consumer the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, both therapeutically equivalent and pharmaceutically equivalent.

(d) Whenever a substitution is made, the pharmacist shall record on the original prescription the fact that there has been a substitution and the identity of the dispensed drug product and its manufacturer. Such prescription shall be made available for inspection by the board or its representative in accordance with the rules of the board.

(e) The substitution of any drug by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine.

(f) A patient for whom a prescription drug order is intended may instruct a pharmacist not to substitute a generic name drug in lieu of a brand name drug.

(g) A practitioner of the healing arts may instruct the pharmacist not to substitute a generic name drug in lieu of a brand name drug by including the words 'brand necessary' in the body of the prescription. When a prescription is a hard copy prescription drug order, such indication of brand necessary must be in the practitioner's own handwriting and shall not be printed, applied by rubber stamp, or any such similar means.

~~(h) The substitution of any drug by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine."~~

SECTION 3.

Said article is further amended by inserting a new Code section after Code Section 26-4-81, relating to substitution of generic drugs for brand name drugs, to read as follows:

"26-4-81.1.

(a) In accordance with this Code section, a pharmacist may substitute a therapeutically equivalent drug for purposes of formulary compliance with the patient's insurance company, carrier, or similar third-party payor plan.

(b) If a practitioner of the healing arts prescribes a drug, but has indicated on the prescription that a therapeutically equivalent drug may be substituted for formulary compliance with the patient's insurance company, carrier, or similar third-party payor plan, the pharmacist shall dispense the therapeutically equivalent drug if it is in the same therapeutic class as the prescribed drug. Such indication shall be made by the practitioner's initials or signature on a preprinted prescription form clearly specifying that a therapeutically equivalent drug may be substituted for the prescribed drug for purposes of formulary compliance. The board shall be authorized to promulgate regulations to establish requirements for preprinted prescription drug order forms to clearly provide for such indication.

(c) The pharmacist shall, within 24 hours of dispensing a therapeutically equivalent drug substitution, notify the ordering practitioner of the substitution and the name of the therapeutically equivalent drug dispensed. Further, the pharmacist shall, whenever a substitution is made pursuant to this Code section, record on the original prescription the fact that there has been a therapeutically equivalent substitution and the identity of the dispensed drug product and its manufacturer. Such prescription shall be made available for inspection by the board or its representative in accordance with the rules of the board.

(d) Substitutions made pursuant to this Code section are authorized for the express purpose of dispensing drugs which are included in the approved formulary of the patient's insurance company, carrier, or similar third-party payor plan.

- 1 (e) The substitution of any drug by a registered pharmacist pursuant to this Code section
2 does not constitute the practice of medicine."

3 **SECTION 4.**

- 4 All laws and parts of laws in conflict with this Act are repealed.